



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 100**

**[Docket Number USCG-2018-0209]**

**RIN 1625-AA08**

### **Special Local Regulations for Marine Events, Delaware River; Philadelphia, PA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of Proposed Rulemaking.

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**SUMMARY:** The Coast Guard is proposing to establish a special local regulation on the waters of the Delaware River in Philadelphia, Pennsylvania. The regulation would restrict vessel traffic operations on a portion of the Delaware River during the Tall Ships Parade of Sail event that is taking place on May 24, 2018, from 12:00 noon to 6:00 p.m. This regulation is necessary to protect the surrounding public and vessels from the hazards associated with a parade of sail.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 7 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2018-0209 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant (Junior Grade) Kiley Relf, U.S. Coast Guard, Sector Delaware Bay, Chief

Waterways Management Division, Coast Guard; telephone (215)271-4851, e-mail

Kiley.A.Relf@uscg.mil.

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background, Purpose, and Legal Basis**

The sponsor for the Sail Philadelphia marine event submitted an application for a marine event permit that will take place from May 24, 2018, through May 28, 2018. The event includes a tall ships parade from noon to 6 p.m. on May 24, 2018. The COTP Delaware Bay has determined that potential hazards associated with the parade would be a safety concern for anyone intending to participate in this event or for vessels that operate within the waters where this event will be held.

The purpose of this proposed rulemaking is to ensure the safety of vessels and persons during the tall ships' parade on the navigable waters of the Delaware River in Philadelphia, Pennsylvania. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1233.

### **III. Discussion of Proposed Rule**

The COTP Delaware Bay, proposes the establishment of a special local regulation on specified waters of the Delaware River, adjacent to Philadelphia, Pennsylvania, bounded in the west by the Pennsylvania shoreline, bounded in the east by the eastern edge of the navigation channel, bounded in the South by the Walt Whitman Bridge, and bounded on the north by the

Benjamin Franklin Bridge. In addition, the special local regulation includes all waters of the Delaware River South of the Benjamin Franklin Bridge to an east-west line from the northern end of Wiggins Marina in Camden, New Jersey, (39°56'32" N and 075°07'56" W) to the Pennsylvania shoreline. The special local regulation will be effective and enforced during the tall ships parade from noon through 6 p.m. on May 24, 2018. Access to the regulated area will be restricted during the specified date and time.

A fleet of spectator vessels is anticipated to gather nearby to view the marine event. Due to the need for vessel control during the marine event, vessel traffic will temporarily be restricted to provide safety of participants, spectators and transiting vessels. The Coast Guard will apply the provisions of 33 CFR 100.501(c) to the above specified locations during the enforcement period. Vessels may not enter the regulated area unless they receive permission from the designated representative.

The Coast Guard will have a marine event patrol, as described in 33 CFR 100.40(a), to the event. Additionally, a Patrol Commander will be assigned to oversee the patrol. The marine event patrol and Patrol Commander may be contacted on VHF-FM Channel 16. During the enforcement period, the Coast Guard Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by the marine event patrol vessel or Patrol Commander, a vessel within the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the regulated area, citation for failure to comply, or both. The Coast Guard Patrol Commander may terminate the event, or the operation of any vessel participating in the event, at any time he or she deems it necessary for the protection of life or property. Coast Guard Sector Delaware Bay will notify the public by a broadcast notice to mariners at least one hour prior to the times of enforcement. Additionally a

broadcast notice to mariners will notify mariners of the termination of the Special Local Regulation.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

##### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

Although this regulation will restrict access to the regulated area, the effect of this proposed rule will not be significant because: (i) the Coast Guard will make extensive notification of the regulated area to the maritime public via maritime advisories so mariners can alter their plans accordingly; (ii) vessels may still be permitted to transit through the regulated area with the permission of the designated representative on a case-by-case basis; and (iii) this rule will be enforced for only the duration of the tall ships parade, a six hour event.

##### **B. Impact on Small Entities**

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The

term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated above in IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying

with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a special local regulation lasting less than 7 hours that would prohibit entry into portions of the Delaware River in order to promote public and maritime safety during a tall ships parade. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. Supporting documentation is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using

<http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

#### **PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C 1233, 33 CFR 1.05-1.

2. Add temporary § 100.T05-0209, to read as follows:

§ 100.T05-0209 Special Local Regulations For Marine Events, Delaware River; Philadelphia, PA

(a) Regulated areas. All waters of the Delaware River, adjacent to Philadelphia, Pennsylvania, bounded in the west by the Pennsylvania shoreline, bounded in the east by the eastern edge of the navigation channel as depicted on U.S. Nautical Chart 12313 or U.S. Electronic Nautical Chart US5PA12M, bounded in the south by the Walt Whitman Bridge, and



bounded on the north by the Benjamin Franklin Bridge. In addition, the special local regulation includes all waters of the Delaware River south of the Benjamin Franklin Bridge to an east-west line from the northern end of Wiggins Marina in Camden, New Jersey, (39°56'32" N and 075°07'56" W) to the Pennsylvania shoreline. The coordinates for both areas are based on datum WGS 84.

(b) Definitions. (1) As used in this section, Captain of the Port means the Commander, Sector Delaware Bay or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) Coast Guard Patrol Commander. A Patrol Commander (PATCOM) is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the respective Coast Guard Sector—Captain of the Port to enforce these regulations.

(3) Official patrol. Any vessel assigned or approved by the respective Captain of the Port with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(4) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(c) Regulations. (1) Controls on vessel movement. The PATCOM or designated marine event patrol may forbid and control the movement of all vessels in the regulated area(s). When hailed or signaled by an official patrol vessel, a vessel in these areas shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) Directions, instructions, and minimum speed necessary. The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) Vessel operators may request permission to enter and transit through a regulated area by contacting the PATCOM on VHF-FM channel 16. When authorized to transit through the regulated area, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course or marine event area.

(d) Enforcement Period. This rule will be enforced from noon through 6 p.m. on May 24, 2018, unless cancelled earlier by the Captain of the Port once all operations are completed.

Dated: April 30, 2018

Scott. E. Anderson  
Captain, U.S. Coast Guard  
Captain of the Port Delaware Bay

[FR Doc. 2018-09436 Filed: 5/3/2018 8:45 am; Publication Date: 5/4/2018]